

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1332

MCELROY COAL COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 09-1427

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

MCELROY COAL COMPANY,

Respondent.

On Petition for Review of an Order of the National Labor
Relations Board. (6-CA-35806)

Argued: March 25, 2010

Decided: August 20, 2010

Before MICHAEL and DAVIS, Circuit Judges, and James A. BEATY,
Jr., Chief United States District Judge for the Middle District
of North Carolina, sitting by designation.

Petition for review granted, order vacated, and remanded by unpublished per curiam opinion.

ARGUED: David Christopher Burton, WILLIAMS MULLEN, Virginia Beach, Virginia, for McElroy Coal Company. Amy Helen Ginn, NATIONAL LABOR RELATIONS BOARD, Washington, D.C., for the National Labor Relations Board. **ON BRIEF:** Ronald Meisburg, General Counsel, John E. Higgins, Jr., Deputy General Counsel, John H. Ferguson, Associate General Counsel, Linda Dreeben, Deputy Associate General Counsel, Julie B. Broido, Supervisory Attorney, NATIONAL LABOR RELATIONS BOARD, Washington, D.C., for the National Labor Relations Board.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

McElroy Coal Company petitions this court to reverse the order of the National Labor Relations Board (NLRB) adopting the administrative law judge's decision that McElroy violated Section 8(a)(1) of the National Labor Relations Act (the Act). McElroy argues that the two-member NLRB "group," which issued its order on March 9, 2009, lacked the statutory authority to act because it had less than three members.

Shortly before oral argument in this case, we held in another case that the same two-member NLRB group constituted a quorum empowered to issue orders under the delegation provision of Section 3(b) of the Act. Narricot Industries, L.P. v. NLRB, 587 F.3d 654, 660 (4th Cir. 2009). On June 17, 2010, the Supreme Court abrogated our Narricot Industries decision when it issued its decision in New Process Steel, L.P. v. NLRB, No. 08-1457, 2010 U.S. LEXIS 4973 (June 17, 2010), holding that Section 3(b) does not authorize two members to constitute a valid delegee group. Accordingly, the two-member NLRB group that issued the order in this case lacked the statutory authority to act. We therefore grant the petition for review, vacate the Board's order, and remand to the Board for further proceedings.

PETITION FOR REVIEW GRANTED,
ORDER VACATED, AND REMANDED.